count.[18] *Young* v. *Columbia Land, etc., Co.*, 99 Pac. 936 (Ore.). The result upholds what seems the better doctrine despite the difficulties of its application.[19]

THE EFFECT OF NON-COMPLIANCE BY A FOREIGN CORPORATION WITH LOCAL STATUTORY REQUIREMENTS. — The dictum of Chief Justice Taney in *Bank of Augusta* v. *Earle*[1] that "a corporation can have no legal existence out of the boundaries of the sovereignty by which it was created," is the basis of the law of foreign corporations in this country. Thus a corporation is foreign in every state except that of incorporation, and is never present even where it conducts a foreign business. This principle, which results from emphasizing the fictitious nature of the corporation, has been rigidly followed despite actual conditions; even, for instance, when the foreign incorporation was effected for the very purpose of doing business in another state and by citizens of that state.[2] Equally well settled is the law that a state may exclude a foreign corporation from transacting business within its territory,[3] and *à fortiori* that a state may impose terms and conditions upon which alone business may be conducted therein.[4] But a foreign corporation may actually transact business without compliance or after merely partial compliance with the state laws: the problem then arises as to what rights may be predicated on such unauthorized action.

Many state statutes are explicit as to the results of non-compliance by the foreign corporation, and a strict construction of these statutes leaves little for judicial decision.[5] Thus an Oregon statute requiring a declaration of purpose, payment of fee, and appointment of an agent to accept service expressly declares that a foreign corporation shall not transact business, and cannot bring suit in the state or federal courts until these terms have been complied with. Under this enactment it was recently held that a foreign corporation neglecting to comply with these provisions could not recover on a contract made within the state. *Cyclone Mining Co.* v. *Baker Light & Power Co.*, 165 Fed. 996 (Circ. Ct., D. Ore.). In view of the express language of the statute the court refused to accede to the contention that the defendant was estopped to show the lack of compliance.[6]

Many statutes, however, are silent as to the results of non-compliance; and as to what rights a guilty foreign corporation may assert under such a statute the authorities appear to be irreconcilable; for the courts have frequently failed to base their decisions on any fundamental proposition of law applicable to the situation. Such a case resolves itself into the assertion of corpo-

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[18] Some of the plaintiffs were also directors, but it does not appear that all were.

[19] Woodroof *v.* Howes, *supra*; Pearson *v.* Concord R. R. Co., 13 Am. & Eng. R. R. Cas. 94, 102; Thompson *v.* Meisser, 108 Ill. 359.

[1] 13 Pet. (U. S.) 519.

[2] Demarest *v.* Flack, 128 N. Y. 205. Foreign corporations have been held present for purposes of taxation and service of process. See Southern Cotton Oil Co. *v.* Wemple, 44 Fed. 24; St. Clair *v.* Cox, 106 U. S. 350, 355; 6 Thompson, Corps., § 7994.

[3] Waters-Pierce Oil Co. *v.* Texas, 177 U. S. 28.

[4] Paul *v.* Virginia, 8 Wall. (U. S.) 168.

[5] In this connection it must be noted that even when the contracts of a foreign corporation are expressly declared void, the courts have unanimously held that the corporation must discharge the contractual obligation attempted to be entered into. Watertown Fire Ins. Co. *v.* Rust, 141 Ill. 85.

[6] *Cf.* Blodgett *v.* Lanyon Zinc Co., 120 Fed. 893.

rate privileges by a group of individuals without legal sanction: in other words, the question is one of unauthorized corporate action.[7] And in dealing with the situation the analogy to the unauthorized action of domestic *de facto* corporations suggests itself. It is submitted that the analogy is close, and that the two questions should be similarly treated. In each case the state is interested in protecting its citizens in dealing with corporations. In each case considerations of fairness between the parties should be balanced against the policy of collateral attack to supplement direct attack by the state.[8] And in each case emphasis should be laid on whether or not an attempt has been made to comply with the law. Thus, by what is believed to be the better law, where such an attempt has been made, the foreign corporation is not refused relief for an invasion of its property rights.[9] Nor is the corporation to be regarded as a trespasser precluded from showing the contributory negligence of the plaintiff in a tort action.[10] Again validity is given to a conveyance of land by the foreign corporation,[11] and a party who has received the benefits of a contract with a foreign corporation is denied the right to collaterally attack its non-compliance with the statutory provisions.[12] But as a drastic check upon total disregard of the law by the foreign corporation, full liability is imposed on the associates, and the foreign incorporation is not recognized.[13] These decisions are strikingly similar to those accorded the unauthorized action of domestic *de facto* corporations,[14] and indicate a proper tendency to treat foreign and *de facto* corporations with equal tolerance.

THE STOCKHOLDER'S REMEDY FOR AN INJURY TO HIS CORPORATION OR TO HIMSELF. — A corporation owes a contractual duty to each shareholder to act within its authorized powers and manage the corporate property in a businesslike manner for the benefit of all concerned. That a stockholder, either by way of specific performance of this contractual liability or in protecting his property rights, may enforce these obligations and obtain redress for their violation is axiomatic. The difficulties involved here pertain not to the right itself but to the remedy. For the wrong to be redressed may result not only from the misconduct of the corporation, but from that of either its officers, the majority stockholders, or outsiders. And the conception of the corporation as a person distinct from the stockholders leads the law to regard a wrong to the corporation as one which the corporation alone can redress, even though a stockholder is, as he must be, damaged by the same wrong.[1] The latter's right is against the corporation, to force it to perform the obligation, which it owes to every stockholder, to redress the wrong.

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[7] In any particular jurisdiction, then, the immediate problem is to discover the general attitude of the state, whether hostile or tolerant towards unauthorized corporate action.

[8] A state may bring *quo warranto* to oust a foreign corporation. State *v.* Boston, etc., Ry. Co., 25 Vt. 433.

[9] Jordan *v.* Western Union Tel. Co., 69 Kan. 140.

[10] Bischoff *v.* Automobile Touring Co., 97 N. Y. App. Div. 17.

[11] Fritts *v.* Palmer, 132 U. S. 282.

[12] Washburn Mill Co. *v.* Bartlett, 3 N. D. 138. *Contra, In re* Comstock, Fed. Cas., No. 3078.

[13] Hill *v.* Beach, 12 N. J. Eq. 31.

[14] See 20 HARV. L. REV. 456; 21 *ibid.* 305.

[1] Smith *v.* Hurd, 12 Met. (Mass.) 371.